



# State of Louisiana

## Department of Environmental Quality



KATHLEEN BABINEAUX BLANCO  
GOVERNOR

MIKE D. McDANIEL, Ph.D.  
SECRETARY

### MEMORANDUM

TO: Keith Jordan

Copies to: Sandra Hilton, Sandy Stephens, Bryan Johnston, Donald Trahan,  
Jodie Alexis, Teri Lanoue, Mike Vince, Sharon Parker, Lou Buatt,  
Chris Roberie

FROM: Remender D. Weatherspoon *RDW*  
Administrative Assistant  
OSEC/Legal Affairs Division  
Regulation Development Section

SUBJECT: Comments on AQ246

October 25, 2005

Attached you will find comments on AQ246 from Mr. Stanley Spruiell with EPA.

## Remender Weatherspoon

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**From:** Judith Schuerman  
**Sent:** Tuesday, October 25, 2005 7:52 AM  
**To:** Remender Weatherspoon  
**Subject:** FW: EPA's Comments on Proposed Regulations for NSR Reform



nsr-reform-la  
omments.wpd (55..

Official comment on AQ246 from EPA.

-----Original Message-----

**From:** Spruiell.Stanley@epamail.epa.gov  
[mailto:Spruiell.Stanley@epamail.epa.gov]  
**Sent:** Monday, October 24, 2005 5:01 PM  
**To:** Judith Schuerman; Sandra Hilton; Bryan Johnston  
**Cc:** Robinson.Jeffrey@epamail.epa.gov; Neleigh.David@epamail.epa.gov;  
Snyder.Shannon@epamail.epa.gov; Jones.Lynde@epamail.epa.gov  
**Subject:** EPA's Comments on Proposed Regulations for NSR Reform

Attached are comments from the Environmental Protection Agency (EPA), Region 6, on Louisiana's proposed regulations for New Source Review (NSR) Reform. We are forwarding these comments to assist you in developing regulations that meet our requirements. You will also receive a signed hard copy in the mail.

Where you plan to adopt provisions that differ from the Federal regulations, you will need to also submit an equivalency demonstration.

To the extent that your regulations differ from the Federal regulations, we encourage you to discuss your proposed program, including your equivalency demonstration, with us prior to final adoption of these rules. We believe that such discussions will be beneficial in facilitating communications between Louisiana Department of Environmental Quality (LDEQ) and EPA and help to ensure that LDEQ adopts regulations the EPA can approve.

If you have any questions, or not schedule a call to discuss your proposed regulations, please call me at the number below or by reply to this message.

(See attached file: nsr-reform-la comments.wpd)

Thank you,

Stanley M. Spruiell

Air Permits Section (6PD-R)

Telephone: (214) 665-7212

Fax: (214) 665-7263

E-mail: [spruiell.stanley@epa.gov](mailto:spruiell.stanley@epa.gov)

Judith A. Schuerman, Ph.D.  
Office of the Secretary  
Legal Affairs Division  
Louisiana Department of Environmental Quality  
P.O. Box 4302  
Baton Rouge, Louisiana 70821-4302

Re: Comments on Proposed Revisions to Adopt New Source Review (NSR) Reform

Dear Dr. Schuerman:

Thank you for the opportunity to review and provide comments on your proposed revisions to adopt NSR Reform. Overall, you have incorporated most of the provisions of the Federal NSR Regulations. We have reviewed your proposed regulations and enclosed our comments which we believe will improve your program and ensure that your final regulations will meet the requirements of the Federal program.

If you prefer to adopt regulations that differ from the Federal regulations, you must include an equivalency demonstration that your program is at least as stringent as, or more stringent than, the Federal regulations. We cannot approve State regulations that differ from the corresponding Federal regulations if you do not provide an equivalency demonstration. Accordingly, we encourage you to discuss your proposed program with us prior to final adoption. We believe that such discussions will be beneficial in facilitating communications and help to ensure that you adopt regulations the we can approve.

Spruiell/ss:6PD-R:x7212:07/29/05\nsr-reform-la comments.wpd

We appreciate the opportunity to provide these comments. If you have any questions, please call Mr. Stanley M. Spruiell of my staff at (214) 665-7212.

Sincerely yours,

David Neleigh  
Chief  
Air Permits Section

Enclosure

## **Enclosure**

### **Comments on Louisiana's Proposed Regulations for NSR Reform**

#### **General Comments.**

- I. On June 24, 2005 the D.C. Circuit Court of Appeals, *New York, et al v. U.S. EPA*, No. 02-1387, released its decision on NSR Reform. In the decision, the court:

- ▶ Vacated the provisions of the 2002 rule regarding Clean Units and Pollution Control Projects (PCP); and
- ▶ Remanded the recordkeeping provisions to EPA for further consideration.

In the September 20, 2005, proposed rules, LDEQ removed the provisions relating to Clean Units and Pollution Control Projects.

Concerning the court's remand of recordkeeping provisions, LDEQ proposes to retain the "reasonable possibility" provisions in Sections 504.D.9 and 509.R.6.

As you are aware, the D.C. Circuit Court of Appeals, *New York v. EPA*, No. 02-1387 (June 24, 2005), released its decision on EPA's 2002 NSR Reform rules. In that decision, the court, *inter alia*, remanded EPA's recordkeeping and reporting requirements portion of the rule so that EPA may "either . . . provide an acceptable explanation for its 'reasonable possibility' standard [for recordkeeping] or . . . devise an appropriately supported alternative." To date, EPA has not responded to the court's remand on this issue. In promulgating its final rule, EPA urges Louisiana to consider the issues discussed in the Court's opinion. If the Louisiana Department of Environmental Quality (LDEQ) is aware of provisions in its rules that address the concerns of the Court, it should identify these provisions and explain how they address the issues identified by the Court.

- II. General Comment relating to equivalency when the State's rule is different from the Federal requirement. The LDEQ has generally proposed to adopt the nonattainment new source review (NNSR) requirements and the prevention of significant deterioration (PSD) requirements from the Federal rules located in 40 CFR 51.165 and 51.166. In many cases, the LDEQ has proposed provisions that differ from the Federal requirements. The LDEQ may adopt regulations that are different from, but equivalent to, the Federal rule. In the following comments, we have identified areas in which the State's proposed regulation differs from the corresponding Federal requirement. In such cases, the State must demonstrate that such provision is at least as stringent as the revised base Federal program. See 67 FR 80241 (December 31, 2002). We cannot approve State regulations that differ from the corresponding Federal regulation if you do not provide an equivalency demonstration. If you desire to adopt provisions that differ from the base Federal program, we encourage you to discuss your proposed program with us before adoption of

the final rule. We believe that such discussions will be beneficial in facilitating communications between LDEQ and EPA and help to ensure that LDEQ adopts regulations that EPA can approve.

## **Comments on the proposed Revisions to section 504 – Nonattainment New Source Review Procedures.**

### **I Comments on section 504.J -- Actuals PALs.**

Paragraph “J.3.b” differs from Federal requirements in 40 CFR 51.165(f)(3)(ii). The Federal rule requires that the PAL baseline include emissions associated with startup, shutdown and malfunction. The proposed State rule limits this provision to only emissions associated with authorized startup, shutdown, and malfunction. LDEQ must address the following:

- A. How does LDEQ define “authorized emissions” associated with startup, shutdown, and malfunction? Does it require all emissions associated with a startup, shutdown, or malfunction to be included in the determination of PAL baseline to the extent that such emissions do not exceed the levels described in 40 CFR 51.165(a)(i)(xxxv)(A)(2) and (B)(2)-(3)? Please clarify whether or not LDEQ is granting variances for excess emissions from malfunctions and explain how LDEQ treats emissions from variances.
- B. Does LDEQ exclude such emissions to the extent that they exceed the levels described in 40 CFR 51.165(a)(i)(xxxv)(A)(2) and (B)(2)-(3)?
- C. LDEQ must demonstrate that its proposed rule is at least as stringent as the Federal requirements in 40 CFR 51.165(f)(3)(ii). We request the LDEQ discuss how it proposes to make this demonstration with EPA prior to adopting this provision.

### **II. Comments on section 504.K – Definitions.**

- A. Definition of *Actual Emissions*. Paragraph “a” differs from 40 CFR 51.165(a)(1)(xii)(A). The State rule refers to “emissions of a pollutant ...” The Federal rule refers to “emissions of a regulated NSR pollutant ...”
- B. Definition of *Baseline Actual Emissions*. Paragraphs “a.i” and “b.i” differ from 40 CFR 51.165(a)(1)(xxxv)(A)(1) and (B)(1). The State rule provides that the “average rate shall include ... authorized emissions associated with startup, shutdown, and malfunction.” The Federal rule provides that “average rate shall include ... emissions associated with startups, shutdowns, and malfunctions.” LDEQ must address the following:

1. How does LDEQ define “authorized emissions” associated with startup, shutdown, or malfunction? Does it require all emissions associated with a startup, shutdown, or malfunction to be included in the determination of baseline actual emissions to the extent that such emissions do not exceed the levels described in 40 CFR 51.165(a)(i)(xxxv)(A)(2) and (B)(2)-(3)? Please clarify whether or not LDEQ is granting variances for excess emissions from malfunctions and explain how LDEQ treats emissions from variances.
  2. Does LDEQ exclude such emissions to the extent that they exceed the levels described in 40 CFR 51.165(a)(i)(xxxv)(A)(2) and (B)(2)-(3)?
  3. LDEQ must demonstrate that its draft rule is at least as stringent as the Federal requirements in 40 CFR 51.165(a)(i)(xxxv)(A)(2) and (B)(2)-(3). We request the LDEQ discuss how it proposes to make this demonstration with EPA prior to adopting this provision.
- C. Definition of *Projected Actual Emissions*. Paragraph “b” differs from 40 CFR 51.165(a)(1)(xxviii)(B)(3) . The proposed State rule provides that the “average rate shall include ... authorized emissions associated with startups, shutdowns and malfunctions.” The Federal rule provides that “average rate shall include ... emissions associated with startups, shutdowns, and malfunctions.” LDEQ must address the following:
1. How does LDEQ define “authorized emissions” associated with startups shutdowns, and malfunctions? Does it require all emissions associated with a startup, shutdown, and malfunction to be included in the determination of projected actual emissions to the extent that such emissions do not exceed the levels described in 40 CFR 51.165(a)(i)(xxxv)(A)(2) and (B)(2)-(3) or allowed under a permit or applicable requirement? Please clarify whether or not LDEQ is granting variances for excess emissions from malfunctions and explain how LDEQ treats emissions from variances.
  2. Does LDEQ exclude such emissions to the extent that they exceed the levels described in 40 CFR 51.165(a)(i)(xxxv)(A)(2) and (B)(2)-(3) or allowed under a permit or applicable requirement?
  3. LDEQ must demonstrate that its proposed rule is at least as stringent as the Federal requirements in 40 CFR 51.165(a)(1)(xxvii)(B)(3). We request the LDEQ discuss how it proposes to make this demonstration with EPA prior to adopting this provision.



## Comments on section 509 – Prevention of Significant Deterioration Procedures.

### I. Comments on section 509.B – Definitions.

- A. Definition of *Baseline Actual Emissions*. Paragraphs “a.i” and “b.i” differ from 40 CFR 51.166(b)(47)(i)(a) and (ii)(a). The State rule provides that the “average rate shall include ... authorized emissions associated with startups, shutdowns, and malfunctions.” The Federal rule provides that “average rate shall include ... emissions associated with startups, shutdowns, and malfunctions.” LDEQ must address the following:
1. How does LDEQ define “authorized emissions” associated with start-ups, shutdowns, and malfunctions? Does it require all emissions associated with a startups, shutdowns, and malfunctions to be included in the determination of baseline actual emissions to the extent that such emissions do not exceed the levels described in 40 CFR 51.166(b)(47)(i)(b) and (ii)(b)-(c)? Please clarify whether or not LDEQ is granting variances for excess emissions from malfunctions and explain how LDEQ treats emissions from variances.
  2. Does LDEQ exclude such emissions to the extent that they exceed the levels described in 40 CFR 51.166(b)(47)(i)(b) and (ii)(b)-(c)?
  3. LDEQ must demonstrate that its draft rule is at least as stringent as the Federal requirements in 40 CFR 51.166(b)(47)(i)(b) and (ii)(b)-(c). We request the LDEQ discuss how it proposes to make this demonstration with EPA prior to adopting this provision.
- B. Definition of *Projected Actual Emissions*. Paragraph “b” differs from 40 CFR 51.166(b)(40)(ii)(b). The proposed State rule provides that the “average rate shall include ... authorized emissions associated with startups, shutdowns, and malfunctions.” The Federal rule provides that “average rate shall include ... emissions associated with startups, shutdowns, and malfunctions.” The LDEQ must demonstrate that its proposed provision is at least as stringent as the Federal provision. LDEQ must address the following:
1. How does LDEQ define “authorized emissions” associated with startups, shutdowns, and malfunctions? Does it require all emissions associated with a startup, shutdown, and malfunction to be included in the determination of projected actual emissions to the extent that such emissions do not exceed the levels described in 40 CFR 51.166(b)(47)(i)(b) and (ii)(b)-(c) or allowed under a permit or applicable

requirement? Please clarify whether or not LDEQ is granting variances for excess emissions from malfunctions and explain how LDEQ treats emissions from variances.

2. Does LDEQ exclude such emissions to the extent that they exceed the levels described in 40 CFR 51.166(b)(47)(i)(b) and (ii)(b)-(c) or allowed under a permit or applicable requirement?
3. LDEQ must demonstrate that its draft rule is at least as stringent as the Federal requirements in 40 CFR 51.166(b)(40)(ii)(b). We request the LDEQ discuss how it proposes to make this demonstration with EPA prior to adopting this provision.

#### **Comments on section 509.AA -- Actuals PALs.**

Paragraph “AA.3.b” differs from Federal requirements in 40 CFR 51.166(w)(3)(ii). The Federal rule requires that the PAL baseline include emissions associated with startup, shutdown and malfunction. The proposed State rule limits this provision to only emissions associated with authorized startup, shutdown, and malfunction. LDEQ must address the following:

1. How does LDEQ define “authorized emissions” associated with startup, shutdown, and malfunction? Does it require all emissions associated with a startup, shutdown, or malfunction to be included in the determination of PAL baseline to the extent that such emissions do not exceed the levels described in 40 CFR 51.166(b)(47)(i)(b) and (ii)(b)-(c)? Please clarify whether or not LDEQ is granting variances for excess emissions from malfunctions and explain how LDEQ treats emissions from variances.
2. Does LDEQ exclude such emissions to the extent that they exceed the levels described in 40 CFR 51.166(b)(47)(i)(b) and (ii)(b)-(c)?
3. LDEQ must demonstrate that its proposed rule is at least as stringent as the Federal requirements in 40 CFR 51.166(w)(3)(ii). We request the LDEQ discuss how it proposes to make this demonstration with EPA prior to adopting this provision.